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COUNSEL FOR TRUSTEE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

IN RE:	§	
	§	
MICHAEL STEPHEN GALMOR,	§	CASE NO. 18-20209-RLJ-7
	§	
Debtor.	§	
	§	
And	§	
	§	
GALMOR’S/G&G STEAM SERVICE,	§	CASE NO. 18-20210-RLJ-7
INC.,	§	
	§	
Debtor.	§	
	§	
KENT RIES, Trustee	§	
<hr/>		
	§	
	§	ADVERSARY NO. 19-2006
	§	
THE LIQUIDATION OF THE	§	
GALMOR FAMILY LIMITED	§	
PARTNERSHIP AND GALMOR	§	
MANAGEMENT, L.L.C.,	§	

MOTION FOR AUTHORITY TO SELL THE “PIT PLACE” REAL PROPERTY

TO THE HONORABLE ROBERT L. JONES, BANKRUPTCY JUDGE:

COMES NOW, Kent Ries, Trustee of the referenced Chapter 7 bankruptcy estates and Court appointed liquidator of the Galmor Family Limited Partnership real estate (“Trustee”), and files this Motion for Authority to Sell the “Pit Place” Real Property, and in support thereof would respectfully show unto the Court as follows:

1. Debtors filed for relief under Chapter 11 of the United States Bankruptcy Code on June 19, 2018 and converted to Chapter 7 cases on January 8, 2019. Kent Ries was subsequently appointed and qualified to serve as the Trustee over the bankruptcy estates.

2. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §1334 and the Agreed Judgment previously entered in this Adversary Proceeding. The matter is core pursuant to 28 U.S.C. §157(b)(2)(N). Sales of estate property are governed by 11 U.S.C. §363. Although this property is owned by the Galmor Family Limited Partnership (“GFLP”), pursuant to the Agreed Judgment, sales of the GFLP real estate shall proceed under §363 as though they are property of the bankruptcy estates.

3. Included among the GFLP real property is 132.70 acres of land (the “Pit Place Property”) more particularly described in the exhibit and survey attached to the Farm and Ranch Contract. A copy of the contract is attached hereto as Exhibit “A” and incorporated herein for all purposes.

4. Trustee has received the offer of Dennis Smock to purchase the Pit Place Property for the price of \$66,350.00. Trustee believes the offer represents a fair value of the Pit Place Property. The Pit Place Property was listed for sale by the Trustee’s broker for \$500.00/acre for the 132.70 acre tract, a total of \$66,350.00.

5. Other than property taxes, the Trustee is not aware of any liens on the Pit Place Property.

6. Trustee seeks authority of this Court to execute all documents and instruments necessary to effectuate the purposes and intent of this Motion.

7. Trustee represents that the sale as proposed herein is a bona fide sale to a good faith purchaser for value.

8. Trustee believes the sale, as proposed herein, is in the best interest of all creditors of the estates and should be approved.

9. In order to maximize the liquidation value of property of the estate, the Trustee will sell the Pit Place Property to the highest bidder. Accordingly, the Trustee has developed the following provisions governing the sale of the Pit Place Property in the event competing bids are received:

A. In the event the Trustee receives one or more competing bids, in writing, from one or more parties, a telephonic auction will be held among all interested bidders.

B. A competing bid must be in writing, in an amount of at least \$66,350.00 and served upon the Trustee no later than 4:30 p.m. on Monday, January 4, 2021, at the office of Kent Ries, 2700 S. Western St., Suite 300, Amarillo, Texas 79109. A good faith earnest money check in the amount of \$5,000.00 must accompany the competing bid.

C. In the event Trustee receives more than one or more competing bids in a timely manner, a telephonic auction of the Pit Place Property shall be held at 10:00 a.m. on Monday, January 11, 2021.

D. In order to participate in the telephonic auction, an interested bidder must have given timely written notice of a competing bid, have deposited \$5,000.00 with the Trustee and have specified the telephone number at which bidder may be reached for the auction. The bidding shall be in increments of, at least, \$3,000.00.

E. Any competing bidder must provide the Trustee with evidence of the financial resources to fund the closing of the proposed purchase.

F. The highest bidder at the telephonic auction shall be awarded the Pit Place Property and closing of the sale of the Pit Place Property to the highest bidder shall occur within

15 days from Court approval. In the event the highest bidder is unable to close as provided herein such bidder shall forfeit its earnest money deposit and the Trustee may, in his sole discretion, sell the Pit Place Property to the next highest bidder or renote the entire sale.

G. The good faith earnest money deposit shall be fully refundable to all unsuccessful bidders and shall be applied to the purchase price of the successful bidder.

11. Trustee represents that the sale as proposed herein is a bona fide sale to a good faith purchaser for value.

12. Trustee believes the sale, as proposed herein, is in the best interest of all creditors of the estate and should be approved.

13. Trustee requests that the fourteen day stay requirement pursuant to F.R.B.P. 6004(h) be waived.

WHEREFORE PREMISES CONSIDERED, Kent Ries, Trustee, respectfully prays for an Order of this Court approving the sale of the Pit Place Property on the terms and condition set forth herein, and for such relief, at law or in equity, to which the Trustee may show himself justly entitled.

Respectfully submitted,

Kent Ries
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By: /s/ Kent Ries

Kent Ries
State Bar No. 16914050

COUNSEL FOR TRUSTEE

NOTICE OF RESPONSE REQUIRED

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 205 SOUTHEAST FIFTH AVENUE, ROOM 201D, AMARILLO, TEXAS 79101, BEFORE 4:00 O'CLOCK P.M. ON JANUARY 1, 2021, WHICH IS TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2020, a true and correct copy of the above and foregoing Motion was sent electronically or mailed in the United States mail, postage prepaid, to the parties listed below and on the attached matrix.

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Bridgeport, Texas 76426

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/s/ Kent Ries
Kent Ries

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

2-12-18

FARM AND RANCH CONTRACT

1. **PARTIES:** The parties to this contract are Kent Ries, Court Appointed Liquidator (Seller) and Dennis Smock (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.
2. **PROPERTY:** The land, improvements, accessories and crops except for the exclusions and reservations, are collectively referred to as the "Property".
- A. **LAND:** The land situated in the County of Wheeler, Texas, described as follows: A 132.70 acre tract of land out of Section 4, Block A-8, H. & G.N. Ry. Co. Survey, as described on the attached Legal Description or as described on attached exhibit, also known as 132.70 ac in Sec 4, Blk A-8, H&GN, Wheeler Co., TX (address/zip code), together with all rights, privileges, and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships.
- B. **IMPROVEMENTS:**
- (1) **FARM AND RANCH IMPROVEMENTS:** The following **permanently installed and built-in items**, if any: windmills, tanks, barns, pens, fences, gates, sheds, outbuildings, and corrals.
- (2) **RESIDENTIAL IMPROVEMENTS:** The house, garage, and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items**, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.
- C. **ACCESSORIES:**
- (1) **FARM AND RANCH ACCESSORIES:** The following described related accessories: (check boxes of conveyed accessories) ☐ portable buildings ☐ hunting blinds ☐ game feeders ☐ livestock feeders and troughs ☐ irrigation equipment ☐ fuel tanks ☐ submersible pumps ☐ pressure tanks ☐ corrals ☐ gates ☐ chutes ☐ other: _____
- (2) **RESIDENTIAL ACCESSORIES:** The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) garages, (ii) entry gates, and (iii) other improvements and accessories.
- D. **CROPS:** Unless otherwise agreed in writing, Seller has the right to harvest all growing crops until delivery of possession of the Property.
- E. **EXCLUSIONS:** The following improvements, accessories, and crops will be retained by Seller and must be removed prior to delivery of possession: N/A
- F. **RESERVATIONS:** Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.
3. **SALES PRICE:**
- A. Cash portion of Sales Price payable by Buyer at closing \$ 66,350.00
- B. Sum of all financing described in the attached: ☐ Third Party Financing Addendum, ☐ Loan Assumption Addendum, ☐ Seller Financing Addendum. \$ -0-
- C. Sales Price (Sum of A and B) \$ 66,350.00
- D. The Sales Price ☐ will ☒ will not be adjusted based on the survey required by Paragraph 6C. If the Sales Price is adjusted, the Sales Price will be calculated on the basis of \$ N/A per acre. If the Sales Price is adjusted by more than 10%, either party may terminate this contract by providing written notice to the other party within N/A days after the terminating party receives the survey. If neither party terminates this contract or if the variance is 10% or less, the adjustment will be made to the amount in ☐ 3A ☐ 3B ☐ proportionately to 3A and 3B.
4. **LICENSE HOLDER DISCLOSURE:** Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: N/A
5. **EARNEST MONEY:** Within 3 days after the Effective Date, Buyer must deliver \$ 5,000.00 as earnest money to, Wheeler Title & Abstract Co., as escrow agent, at 112 E Texas Ave, Wheeler, TX 79096 (address). Buyer shall deposit additional earnest money of \$ N/A with escrow agent within N/A days after the Effective Date of this contract. If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. **Time is of the essence for this paragraph.**

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Initialed for identification by Buyer DS and Seller [Signature]

TREC NO. 25-12

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at ☒ Seller's ☐ Buyer's expense an owner policy of title insurance (Title Policy) issued by: Wheeler Title & Abstract Co. (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
- (1) The standard printed exception for standby fees, taxes and assessments.
 - (2) Liens created as part of the financing described in Paragraph 3.
 - (3) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
 - (4) The standard printed exception as to marital rights.
 - (5) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
 - (6) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:
 - ☒ (i) will not be amended or deleted from the title policy; or
 - ☐ (ii) will be amended to read, "shortages in area" at the expense of ☐ Buyer ☐ Seller.
 - (7) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only):
- ☐ (1) Within N/A days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** The existing survey ☐ will ☐ will not be recertified to a date subsequent to the Effective Date of this contract at the expense of ☐ Buyer ☐ Seller. If the existing survey is not approved by the Title Company or Buyer's lender(s), a new survey will be obtained at the expense of ☐ Buyer ☐ Seller no later than 3 days prior to Closing Date.
 - ☐ (2) Within N/A days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
 - ☐ (3) Within N/A days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
 - ☒ (4) No survey is required.
- D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title disclosed on the survey other than items 6A(1) through (5) above; or disclosed in the Commitment other than items 6A(1) through (7) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity: N/A
- Buyer must object the earlier of (i) the Closing Date or (ii) 7 days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or Survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or Survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, Survey, or Exception Document(s) is delivered to Buyer.
- E. EXCEPTION DOCUMENTS: Prior to the execution of the contract, Seller has provided Buyer with copies of the Exception Documents listed below or on the attached exhibit. Matters reflected in the Exception Documents listed below or on the attached exhibit will be permitted exceptions in the Title Policy and will not be a basis for objection to title:

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DocumentDateRecording ReferenceNone have been provided.

- F. SURFACE LEASES: Prior to the execution of the contract, Seller has provided Buyer with copies of written leases and given notice of oral leases (Leases) listed below or on the attached exhibit. The following Leases will be permitted exceptions in the Title Policy and will not be a basis for objection to title: None.
- G. TITLE NOTICES:
- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
 - (2) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
 - (3) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
 - (4) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
 - (5) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
 - (6) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
 - (7) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property ☐ is ☒ is not located in a Texas Agricultural Development District. For additional information contact the Texas Department of Agriculture.
 - (8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
 - (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
 - (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code,

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Initialed for identification by Buyer DS and Seller [Signature]

TREC NO. 25-12

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that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

7. PROPERTY CONDITION:

- A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Any hydrostatic testing must be separately authorized by Seller in writing. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

- B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):

(Check one box only)

- ☐ (1) Buyer has received the Notice
- ☐ (2) Buyer has not received the Notice. Within N/A days after the Effective Date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.

- ☒ (3) The Texas Property Code does not require this Seller to furnish the Notice.

- C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

- D. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7D (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

(Check one box only)

- ☒ (1) Buyer accepts the Property As Is.
- ☐ (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: N/A

(Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs and treatments.)

- E. COMPLETION OF REPAIRS: Unless otherwise agreed in writing: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days if necessary for Seller to complete repairs.
- F. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- H. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
 - (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
 - (3) any environmental hazards that materially and adversely affect the Property;
 - (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
 - (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
 - (6) any threatened or endangered species or their habitat affecting the Property.

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- I. **RESIDENTIAL SERVICE CONTRACTS:** Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$ N/A. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**
- J. **GOVERNMENT PROGRAMS:** The Property is subject to the government programs listed below or on the attached exhibit: N/A. Seller shall provide Buyer with copies of all governmental program agreements. Any allocation or proration of payment under governmental programs is made by separate agreement between the parties which will survive closing.
8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.
9. **CLOSING:**
- A. The closing of the sale will be on or before January 8, 2021, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
- (1) Seller shall execute and deliver a ~~general~~ ^{special} warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6, an assignment of Leases, and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
- (5) If the Property is subject to a residential lease, Seller shall transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has acquired the Property and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.
10. **POSSESSION:**
- A. Buyer's Possession: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: ☒ upon closing and funding ☐ according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**
- B. Leases:
- (1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.
- (2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.
11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holders from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)
- *This contract is subject to bankruptcy Court approval for it to be binding on the seller. Such approval includes the opportunity for third parties to bid a higher price on the same terms as are in this contract. If such a bid occurs, all potential buyers may participate in a bidding process as described in the motion and order approving the sale. The motion to sell has a 21 day notice period before the bankruptcy Court will consider approval.**
- *The Closing Date may be extended a reasonable period of time to complete the above described bankruptcy court approval process.**
- *Subject property is located in the Panhandle Groundwater Conservation District.**
- * SEE ADDENDUM A.**

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12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ N/A to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses) Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Rentals which are unknown at time of closing will be prorated between Buyer and Seller when they become known.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Assessments are imposed because of Seller's use or change in use of the Property prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.**15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

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18. ESCROW:

- A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
- C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
- D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

To Buyerat: PO Box 1257Bridgeport, TX 76426Phone: (817)614-8199

Fax: _____

E-mail: d.smock@smocktransport.com**To Seller**at: 2700 S. Western St., Suite 300Amarillo, TX 79109Phone: (806)242-7437

Fax: _____

E-mail: kent@kentries.com

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22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- | | |
|---|--|
| <input type="checkbox"/> Third Party Financing Addendum | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Seller's Temporary Residential Lease |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Short Sale Addendum |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Loan Assumption Addendum | <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area |
| <input type="checkbox"/> Addendum for "Back-Up" Contract | <input checked="" type="checkbox"/> Other (list): <u>Legal Description, Addendum A</u> |
| <input type="checkbox"/> Addendum for Coastal Area Property | |
| <input type="checkbox"/> Addendum for Authorizing Hydrostatic Testing | |
| <input type="checkbox"/> Addendum Concerning Right to Terminate Due to Lender's Appraisal | |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals | |

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ N/A (Option Fee) within 3 days after the Effective Date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within N/A days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ☐ will ☐ will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

24. CONSULT AN ATTORNEY BEFORE SIGNING: TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: _____

Seller's Attorney is: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

EXECUTED the 9th day of December, 2020 (EFFECTIVE DATE).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Dennis Smock
Buyer **Dennis Smock**

Kent Ries
Seller **Kent Ries, Court Ordered Liquidator**

Buyer

Seller



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 25-12. This form replaces TREC NO. 25-11.

TXR 1701

TREC NO. 25-12

Contract Concerning 132.70 ac in Sec 4, Blk A-8, H&GN, Wheeler Co., TX
(Address of Property)

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RATIFICATION OF FEE

Listing Broker has agreed to pay Other Broker N/A of the total Sales Price when Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.

Other Broker:

By: _____

Listing Broker:

By: _____

BROKER INFORMATION AND AGREEMENT FOR PAYMENT OF BROKERS' FEESN/A

Other Broker

License No.

Lewis Whitaker Real Estate, LLC DBA Whitaker Real 9009284

Listing or Principal Broker

License No.

N/A

Associate's Name

License No.

Lewis Whitaker0194719

Listing Associate's Name

License No.

N/A

Associate's Email Address

Phone

lewis@whitakerrealestate.com (806)356-6100

Listing Associate's Email Address

Phone

N/A

Licensed Supervisor of Associate

License No.

Licensed Supervisor of Listing Associate

License No.

N/A

Other Broker's Office Address

Phone

4600 W I-40, Suite 101

Listing Broker's Office Address

Phone

N/A

City

State

Zip

AmarilloTX79106

City

State

Zip

represents

☐

Buyer only as Buyer's agent

☐

Seller as Listing Broker's subagent

Selling Associate

License No.

Selling Associate's Email Address

Phone

Licensed Supervisor of Selling Associate

License No.

Selling Associate's Office Address

City

State

Zip

represents

☒

Seller Only

☐

Buyer Only

☐

Seller and Buyer as an intermediary

Upon closing of the sale by Seller to Buyer of the Property described in the contract to which this fee agreement is attached: (a) ☐ Seller ☐ Buyer will pay Listing/Principal Broker ☐ a cash fee of \$ N/A or ☐ N/A % of the total Sales Price; and (b) ☐ Seller ☐ Buyer will pay Other Broker ☐ a cash fee of \$ N/A or ☐ N/A % of the total Sales Price. Seller/Buyer authorizes and directs Escrow Agent to pay the brokers from the proceeds at closing.

Brokers' fees are negotiable. Brokers' fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested or maintained by the Texas Real Estate Commission.

Seller _____

Buyer _____

Seller _____

Buyer _____

Do not sign if there is a separate written agreement for payment of Brokers' fees.

Contract Concerning 132.70 ac in Sec 4, Blk A-8, H&GN, Wheeler Co., TX Page 10 of 10 2-12-18
 (Address of Property)

OPTION FEE RECEIPT

Receipt of \$N/A (Option Fee) in the form of N/A
 is acknowledged.

Seller or Listing Broker _____

Date _____

EARNEST MONEY RECEIPT

Receipt of \$5,000.00

Earnest Money in the form of Ch# 1063

is acknowledged.

Wheeler Title & Abstract Co.

Chalene S. Hefley

chefley@sheltontitleco.com

12/9/2020 3:00pm

Escrow Agent

Received by

Email Address

Date/Time

PO Box 506 or 112 E Texas Ave

(806)826-3526

Address

Phone

Wheeler

TX

79096

(806)826-5013

City

State

Zip

Fax

CONTRACT RECEIPT

Receipt of the Contract is acknowledged.

Wheeler Title & Abstract Co.

Chalene S. Hefley

chefley@sheltontitleco.com

12/9/2020

Escrow Agent

Received by

Email Address

Date

PO Box 506 or 112 E Texas Ave

(806)826-3526

Address

Phone

Wheeler

TX

79096

(806)826-5013

City

State

Zip

Fax

ADDITIONAL EARNEST MONEY RECEIPT

Receipt of \$N/A additional Earnest Money in the form of N/A
 is acknowledged.

N/A

Escrow Agent

Received by

N/A

Email Address

Date/Time

N/A

Address

Phone

N/A

City

State

Zip

Fax

ADDENDUM A

GALMOR PIT PLACE
IN SECTION 4, BLOCK A-8, H&GN SURVEY
WHEELER COUNTY, TEXAS

1. From Page 6, Item 13 PRORATIONS AND ROLLBACK TAXES: Seller will be responsible for all property taxes related to 2020 or prior years. Buyer will be responsible for all property taxes related to 2021 and future years. Property taxes will not be prorated at closing.
2. Notwithstanding Paragraph 7H of the Contract, as is evident from a visual inspection of the Property, there is what appears to be an abandoned mining pit on a portion of the Property (the "Pit"). Seller makes no representations about the condition of the Pit and it shall be conveyed and transferred to Buyer, "as is, where is, and with all faults" and without any warranties, representations, or guarantees, either expressed or implied, of any kind, nature, or type whatsoever from or on behalf of the Seller except for any limited warranties of title set forth in any deed to Buyer. Seller disclaims any representation or warranty with regard the Pit, it's conditions or compliance with any environmental protection, pollution or land use laws, rules, regulations, orders, or requirements including, but not limited to, those pertaining to the handling, generating, treating, storing, or disposing of any hazardous waste or substance.

Buyer:


Dennis Smock

Seller:


Kent Ries, Court Ordered Liquidator

LEGAL DESCRIPTION

FIELD NOTES for a 132.70 acre tract of land out of Section 4, Block A-8, H. & G. N. Ry. Co. Survey, Wheeler County, Texas.

BEGINNING at a 1-1/4" iron pipe found in County Road V at the southwest corner of said Section 4 for the southwest corner of this tract.

THENCE N. 00° 37' 24" W., along the west line of said Section 4, a distance of 2249.28 feet to a 1/2" iron rod set with a yellow cap inscribed "RPLS 4263" (hereafter referred to as an OJD cap) for the northwest corner of this tract.

THENCE N. 82° 23' 40" E. a distance of 1701.37 feet to a 3" iron pipe fence corner for an angle corner of this tract.

THENCE S. 56° 34' 13" E. a distance of 12.69 feet to a 3" iron pipe fence corner for an angle corner of this tract.

THENCE S. 40° 22' 18" E. a distance of 1359.47 feet to a 3" iron pipe fence corner for an angle corner of this tract.

THENCE S. 25° 49' 43" E. a distance of 47.67 feet to a 3" iron pipe fence corner for an angle corner of this tract.

THENCE S. 82° 13' 06" E. a distance of 35.47 feet to a 3" iron pipe fence corner for an angle corner of this tract.

THENCE S. 02° 03' 36" E. a distance of 28.16 feet to an OJD cap set for an ell corner of this tract.

THENCE N. 89° 15' 50" E. a distance of 26.44 feet to an OJD cap set at the southwest corner of the north half of the southeast quarter of said Section 4 for the northeast corner of this tract.

THENCE S. 00° 42' 13" E., at 1298.73 feet pass an OJD cap set in the north margin of said County Road V, a total distance of 1322.73 feet to the middle of the south line of said Section 4 in said County Road V for the southeast corner of this tract.

THENCE S. 89° 16' 40" W., along said south line and said County Road V, a distance of 2652.93 feet to the place of BEGINNING and containing 132.70 acres of land.

DS 